

Amendment to Claims

Claims 1, 16, 42, and 45 have been amended to clarify that it is the contents of the "datastruct element" which are being generated and not the contents of the "datastruct." This amendment is not in response to any objection or rejection. Rather, it is intended to clarify claim language.

SUBSTANTIVE CLAIM REJECTIONS

Claim Rejections under §101

The Office indicates:

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-14, and 17-18 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims invention set forth non-functional descriptive material but fails to set forth physical structures or materials comprising of hardware or a combination of hardware and software within the technological arts (i.e. a computer) to produce a "useful, concrete and tangible" result. Claims 1-14, and 17-18 are interpreted as software per se, abstract ideas or mental construct and not tangibly embodied on a computer readable medium or hardware.

Accordingly, Applicant amends independent claims 1 and 17 such that the generated data structure ("datastruct") element is recited as being embodied in

Serial No.: 09/635,830

Atty Docket No.: MS1-521us

RESPONSE TO NON-FINAL OFFICE ACTION DATED

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1 "one or more computer-readable media." Applicant submits that this change
2 overcomes this rejection and asks the Office to withdraw this rejection.

3 **Claim Rejections under §§ 102 and 103**

4 The Office rejects all of the pending claims (1-18, 42, 45, and 48) under
5 §102 and/or §103. For the reasons set forth below, the Office has not shown that
6 one or more of the cited references anticipate the rejected claims. For the reasons
7 set forth below, the Office has not made a *prima facie* case showing that the
8 rejected claims are obvious (under §103). Accordingly, Applicant respectfully
9 requests that the rejections be withdrawn and the case be passed along to issuance.

10 The Office's rejections are based upon the following references:

- 11 • **Professional XML:** Martin et al., "Professional XML", Public
12 Release 1/2000, By Wrox Press Ltd, Birmingham, UK;
- 13 • **Martin:** *Timm Owen Martin*, US Patent No. 6,704,743 (issued
14 3/9/2004 based upon provisional application filed on 9/13/1999).

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16 **Removal of Cited References from Consideration**

17 With the amendment herein that claims priority to a provisional filed on
18 8/10/1999, Applicant submits that both **Professional XML** and **Martin** should be
19 removed from consideration. The **Professional XML** reference was first publicly
20 released in 1/2000, which is after the priority date of 8/10/1999. The **Martin**
21 reference is a patent application filed on 9/13/1999, which is after the priority date
22 of 8/10/1999.
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Accordingly, Applicant asks the Office to withdraw these two references from consideration. Consequently, Applicant asks the Office with withdraw its rejections based on those references.

Conclusion

All pending claims are in condition for allowance. Applicant respectfully requests reconsideration and prompt issuance of the application. If any issues remain that prevent issuance of this application, the Office is urged to contact the undersigned attorney before issuing a subsequent Action.

Respectfully Submitted,

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